

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Alan Lee DelVecchio,

Petitioner,

v.

Civil No. 08-2220 (JNE/JSM)
ORDER

Timothy Wengler,

Respondent.

On July 25, 2011, the Court adopted a Report and Recommendation dismissing Petitioner's Petition for Habeas Corpus by a Person in State Custody. The Court now addresses whether to issue a certificate of appealability. An appeal cannot be taken from a final order denying a habeas petition without a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A court cannot grant a certificate of appealability unless the applicant has made "a substantial showing of the denial of a constitutional right." § 2253(c)(2). Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, a certificate of appealability "should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* Because reasonable jurists would not find the rejection of Petitioner's claims debatable, the Court declines to grant Petitioner a certificate of appealability. Accordingly, IT IS ORDERED THAT:

1. Petitioner is not entitled to a certificate of appealability.

Dated: July 26, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge